

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

OLD GRANITE DEVELOPMENT,) Docket No. 3:06CV2950
LTD.,)
Plaintiff,) Toledo, Ohio
v.) May 23, 2008
CITY OF TOLEDO,) Jury Trial
Defendant.)

TRANSCRIPT OF JURY TRIAL, VOLUME 5
BEFORE THE HONORABLE JACK ZOUHARY
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Proceedings recorded by mechanical stenography, transcript
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1 THE COURT: Let the record reflect we're in court
2 and with counsel. Jury has not yet been called in.

3 Last evening The Court held a charge conference
4 with counsel and worked on the jury instructions, and we
5 are prepared to instruct the jury this morning. I advised
6 counsel off the record that I did make some cosmetic
7 changes to the jury instructions, made one change to the
8 verdict form for the plaintiff and that was to add a phrase
9 for nominal damages with respect to the tree and bramble
10 removal, so that that's reflected in the potential verdict
11 for the plaintiff.

12 I also want to comment on the arguments
13 yesterday. This court granted defendant's motion for
14 judgment as a matter of law on plaintiff's taking claims.
15 It was suggested that plaintiff's Section 1983 action might
16 survive citing the case of Becic, B-E-C-I-C, versus City of
17 Cleveland; however, that case, as well as other cases, made
18 clear that a Section 1983 claim, a plaintiff must prove an
19 underlying violation of a constitutional right, and refer
20 to the Howard versus Grinage, G-R-I-N-A-G-E, case, which
21 quotes the U.S. Supreme Court case of Daniels versus
22 Williams. And therefore, I believe the judgment dismissing
23 both the taking and the 1983 claim is appropriate.

24 I will, counsel, provide you with an opportunity
25 to make any record with respect to the jury instructions as

1 read by me before I dismiss the jury. I will turn to you
2 and say is there anything further counsel? And if there
3 is, you may come up to the court reporter, I will meet with
4 you at her station and you can, for the record, made any
5 changes to the instructions that we discussed.

6 But I understand, Keith, you have some new
7 comments with respect to the instructions and if you want
8 to take the time now to put those in the record, you may do
9 so.

10 MR. WATKINS: Thank you. I should approach the
11 court reporter?

12 THE COURT: No, right there now.

13 MR. WATKINS: Simply for the record, we wanted to
14 incorporate all the arguments we made in response to
15 directed verdict. In addition, as arguments previously
16 made in this case, the governmental immunity issue, we
17 would preserve and object for that reason.

18 In addition to that, the -- I have -- after our
19 conference in chambers, I've reviewed the answer filed on
20 behalf of the Defendant City of Toledo, and would indicate
21 that paragraph 6 of the affirmative defenses alleges that
22 the plaintiff -- the damages claim were the result of the
23 plaintiff's negligent conduct and not conduct of the City
24 of Toledo and paragraph 9 issued as a defense spoliation of
25 evidence.

1 Those are ones that I don't think were in the
2 jury instructions. So for the record, we simply preserve
3 those.

4 THE COURT: Anything further from plaintiff?

5 MR. ROBON: No, Your Honor.

6 THE COURT: Let's call the jury, please.

7 The record should also reflect that counsel
8 requested, and I have given them up to 40 minutes each for
9 closing. Plaintiff reserving up to ten minutes for
10 rebuttal.

11 (Jury brought in at 8:15 a.m.)

12 THE COURT: Good morning, ladies and gentlemen.
13 On your seats you will find a stack of papers. I'm going
14 to ask you to turn them over, and the first one on top
15 should read "jury instructions before closing arguments."
16 And if you'll look at me, I'll know that you've found them.
17 Okay. And I'm going to ask you to follow along with me as
18 I read them with you.

19 Members of the jury, it is now my duty to
20 instruct you on the law that applies to this case. Court
21 and the jury have separate functions. You decide the
22 disputed facts and I give the instructions of law. It is
23 your sworn duty to accept these instructions and to apply
24 the law as it is given to you. You are not permitted to
25 change the law or to apply your own idea of what you think

1 the law should be.

2 The next page is a table of contents. This may
3 help you because these will go back with you to the jury
4 room for deliberation, so we'll skip over and go to what is
5 marked page 1, "burden of proof" at the top.

6 The person who claims that certain facts exist
7 must prove them by a preponderance of the evidence. This
8 duty is known as the burden of proof. The burden of proof
9 is on the plaintiff, Old Granite Development, to prove the
10 facts necessary for its case by a preponderance of the
11 evidence. Preponderance of the evidence is the greater
12 weight of the evidence. That is evidence that you believe,
13 in your mind, outweighs or overbalances the evidence
14 opposed to it. A preponderance means evidence that is more
15 probable, more persuasive, or of greater probative value.
16 It is the quality of the evidence that must weighed.
17 Quality may or may not be identical with quantity or the
18 greater number of witnesses.

19 In determining whether an issue has been proved
20 by a preponderance of the evidence, you should consider all
21 the evidence, regardless of who produced it. If the weight
22 of the evidence is equally balanced, or if you are unable
23 to determine which side of an issue has the preponderance,
24 the party who has the burden of proof has not established
25 such issue by a preponderance of the evidence.

1 Evidence is all the testimony received from the
2 witnesses including: Depositions; any exhibits admitted
3 during the trial; any facts stipulated or agreed to by
4 counsel; and any facts that The Court requires you to
5 accept as true.

6 Evidence may be direct or circumstantial or both.
7 Direct evidence is the testimony given by a witness who has
8 seen or heard the facts to which he or she testifies. It
9 includes exhibits admitted into evidence during the trial.

10 Evidence may also be used to prove a fact by
11 inference. This is referred to as "circumstantial
12 evidence." Circumstantial evidence is the proof of facts
13 by direct evidence from which you may infer other
14 reasonable facts or conclusions. For example, if a witness
15 testified that he saw it raining outside and you believed
16 him, that would be direct evidence that it was raining. If
17 someone walked into the courtroom wearing a raincoat
18 covered with drops of water and carrying a wet umbrella,
19 that would be circumstantial evidence from which you could
20 conclude that it was raining.

21 You may infer a fact or facts only from other
22 facts that have -- that have been proven by a preponderance
23 of the evidence. You may not make one inference from
24 another inference, but you may draw more than one inference
25 from the same facts or circumstances.

1 Direct evidence and circumstantial evidence are
2 of equal weight. Evidence does not include the pleadings
3 or any statement of counsel made during the trial, unless
4 such statement was an admission or stipulation as to
5 certain facts. The opening statements and the closing
6 arguments of counsel are designed to assist you. They are
7 not evidence.

8 Statements or answers ordered stricken, or to
9 which The Court sustained an objection, or that you were
10 instructed to disregard are not evidence and must be
11 treated as though you never heard them. You must not guess
12 why The Court sustained the objection to any question or
13 what the answer to such question might have been. You must
14 not consider as evidence any suggestion included in a
15 question that was not answered.

16 You are the judges of the facts, the credibility
17 of the witnesses, and the weight of the evidence. To weigh
18 the evidence, you must consider the credibility or
19 believability of the witnesses. You will use the tests of
20 truthfulness that you use in your daily lives. These tests
21 include the appearance of each witness upon the stand; his
22 or her manner of testifying; the reasonableness of the
23 testimony; the opportunity he or she had to see, hear and
24 know the things concerning which he or she testified; his
25 or her accuracy of memory; frankness or lack of it;

1 intelligence, interest, and bias, if any; together with all
2 the paths and circumstances surrounding the testimony.

3 Use these tests and assign to each witness'
4 testimony such weight as you think proper. You are not
5 required to believe the testimony of any witness simply
6 because he or she was under oath. Nor are you required to
7 accept testimony which is uncontradicted. You may believe
8 or disbelieve all or any part of the testimony of any
9 witness. It is your duty to determine what testimony is
10 worthy of belief.

11 Some guides for evaluating the testimony include:
12 Was the witness able to clearly see or hear the events?
13 How good was the witness' memory? Was there anything that
14 may have interfered with the witness' ability to perceive
15 or remember the events? How did the witness act while
16 testifying? Did the witness have any relationship to
17 either party, or anything to gain or lose from the case
18 that might influence the witness' testimony? Was the
19 witness' testimony supported or contradicted by the other
20 evidence that you found believable?

21 If statements in prior deposition testimony
22 differ from the courtroom testimony given by the same
23 witness, you may consider them to test the credibility of
24 that witness.

25 You may not discriminate between a business

1 organization, such as plaintiff, and a government entity
2 such as defendant. Both are persons in the eyes of the law
3 and both are entitled to the same fair and impartial
4 consideration.

5 Since an organization can act only through its
6 employees or other agents, the burden is on plaintiff to
7 establish, by a preponderance of the evidence, that the
8 conduct of one or more employee or agent of defendant was a
9 proximate cause of any damages sustained by plaintiff.

10 Any negligence or trespass of an employee or
11 agent of the City of Toledo in the performance of his or
12 her duties, is attributable to the City of Toledo.

13 An expert witness is one who, through study or
14 experience or both, has acquired skill that makes him or
15 her better qualified than the layman to form an opinion in
16 question. For example, to enable you as jurors to
17 determine whether defendant is negligent, it is necessary
18 to have experts testify as to both the appropriate standard
19 of care that defendant should be held to and their opinions
20 whether defendant's conduct amounted to a deviation from
21 this appropriate standard. Such opinions are also required
22 to aide you to determine whether any such deviation from
23 the appropriate standard of care was a proximate cause of
24 plaintiff's alleged damages. This does not mean, however,
25 that you are to consider yourselves bound by the opinion of

1 any expert. Where the opinions are in conflict, it is for
2 you, as trier of fact, to determine which is the more
3 worthy of belief.

4 In such a case, in determining what is the
5 greater weight of the evidence, you should not content
6 yourselves with a mere counting of the number of witnesses,
7 but should consider relative qualifications, credibility,
8 and believability. In this trial, expert witnesses may
9 have advanced opinions based on the testimony of other
10 witnesses in the case, or based assumed facts that the
11 evidence tends to establish. It is for you, as jurors, to
12 determine whether the facts on any such opinions are based
13 have been established. The value of any expert's opinion
14 is no stronger than the facts on which it was based.

15 In the course of this trial, counsel have also
16 put to expert witnesses certain questions known as
17 "hypotheticals." With such a question, the expert is
18 required to assume to be true a statement of facts that
19 might or might not the apply in the dispute involved in
20 this case. The asking of such a question does not indicate
21 that the facts so required to be assumed apply to this
22 case. It is for you to determine whether or not they do
23 apply, and if they do not, to determine the effect or value
24 of the answers given in light of the nonapplicable facts.
25 If there is no evidence of a single fact on which the

1 question is based, the opinion given in the answer is not
2 entitled to receive any weight.

3 A number of exhibits, including videos and the
4 testimony related to them have been introduced. You may
5 consider whether the exhibits are the same objects and in
6 the same condition as originally taken by the parties. You
7 will determine what weight, if any, the exhibits should
8 receive in light of all the evidence. This concludes the
9 general instructions on certain preliminary matters,
10 including the burden of proof, evidence, and the
11 credibility of witnesses.

12 I will now give you the instructions of law on
13 the specific issues in this case. Plaintiff claims
14 defendant was negligent in surveying and staking the
15 property line between the railroad right-of-way and the
16 Cambridge subdivision; that defendant's employees or agents
17 trespassed on plaintiff's property; and that trees and
18 brambles were removed from plaintiff's property, thereby
19 exposing the lots to an active railroad track and
20 diminishing the value of the Cambridge subdivision.

21 Plaintiff also claims defendant was negligent in
22 authorizing Ric Man Construction to sever the drain and
23 pipe and in doing so caused accumulation of water on
24 certain lots in the Cambridge subdivision.

25 Defendant claims it properly staked the property

1 line and that the trees and brambles removed were on
2 railroad property where the city had permission to work.

3 Defendant also claims the decision to sever the
4 drainage pipe was not negligent and that it did not cause
5 accumulation of water on the Cambridge subdivision lots.

6 Plaintiff has two claims, negligence and
7 trespass. With respect to the removal of trees and
8 brambles, plaintiff must prove these were located on
9 plaintiff's, not railroad, property. Trespass claim:
10 Plaintiff claims defendant trespassed on certain lots. To
11 establish this claim, plaintiff must prove by the greater
12 weight of the evidence that one is, plaintiff was in
13 possession of the properties; two, defendant entered upon
14 plaintiff's property without permission from plaintiff; and
15 three, proximately caused damage to plaintiff's property.

16 The measure of actual damages is the reduction in
17 the value of the property resulting from the trespass.
18 Even if plaintiff fails to prove actual damages, plaintiff
19 is entitled to nominal damages for trespass. If you find
20 in favor of plaintiff on the trespass claim, but find that
21 plaintiff failed to prove damages by the greater weight of
22 the evidence, you may award nominal damages. "Nominal"
23 means trivial or small.

24 Negligence claim: Plaintiff claims defendant was
25 negligent in staking the property line between the railroad

1 right-of-way and plaintiff's property and in instructing
2 Ric Man Construction to sever the drainage pipe.
3 Negligence is a failure to use reasonable care. Every
4 person is required to use reasonable care to avoid injuring
5 another's property and is liable for damages if its conduct
6 causes damage.

7 I will next define the meaning of several terms.

8 Negligence is the failure to use reasonable care.

9 Reasonable care is that degree of care which a
10 reasonably careful person would use under like
11 circumstances.

12 Negligence may constitute either in doing
13 something that a reasonably careful person are not to do
14 understood the circumstances or in failing to do something
15 that a reasonably careful person would do in underlying
16 circumstances.

17 In determining whether a party used reasonable
18 care, you will consider whether it ought to have foreseen
19 under the circumstances that the natural and probable
20 result of an act or failure of an act would cause some
21 damage. The test for foreseeability is not whether a party
22 should have foreseen damage exactly as it happened. The
23 test is whether under all the circumstances, a reasonably
24 prudent person would have anticipated that damage was
25 likely to result to someone from the act or failure to act.

1 If a party, by the use of reasonable care, should have
2 foreseen some damage and should have acted, or if it did
3 act, should have taken precautions to avoid that result,
4 then the performance of the act or the failure to take such
5 precautions is negligence.

6 A party who seeks to recover for damage must
7 prove not only that the other party trespassed or was
8 negligent, but also that such conduct was proximate cause
9 of the damage. Proximate cause is an act or failure to act
10 that in the natural and continuous sequence directly
11 produces the damage, and without which, it would not have
12 occurred. Cause occurs when damage is the natural and
13 foreseeable result of the act or failure to act.

14 Plaintiff's proof must establish the causal
15 connection between any negligence or trespass and any
16 damage. In other words, plaintiff's proof must establish
17 that it is more likely than not that the damage complained
18 of was proximately caused by defendant's negligence or
19 trespass.

20 A party is not responsible for damage to another
21 if its negligence is remote -- I'm sorry -- is a remote
22 cause and not a proximate cause. A cause is remote when
23 the result could not have been reasonably foreseen or
24 anticipated as being the likely cause of any damage.

25 For each of plaintiff's claims, plaintiff bares

1 the burden of establishing its damages by a preponderance
2 of the evidence, with the exception of nominal damages for
3 its trespass claim as the earlier instruction indicated.
4 You will determine from the preponderance of the evidence
5 an amount of money that will reasonably compensate
6 plaintiff for the actual damage proximately caused by
7 defendant's conduct under each claim that plaintiff proves
8 by a preponderance of the evidence.

9 You will consider economic damages.
10 Specifically, plaintiff claims the lots in the Cambridge
11 subdivision were diminished in value by defendant's
12 conduct. The measure of damage which you will apply is the
13 diminished fair market value of the property, as shown by a
14 preponderance of the evidence. The fair market value is
15 the price the property would bring if offered for sale in
16 the open market by an owner who desired to sell it, but was
17 under no necessity or compulsion to do so, and when
18 purchased by a buyer who desired to buy it, but was under
19 no necessity or compulsion to do so -- each having
20 knowledge of the pertinent facts concerning such property.

21 If you find the damages are such that the
22 property can be restored to its original condition, then
23 the owner may recover the reasonable cost of these
24 necessary repairs. If, however, these repair costs exceed
25 the difference in the fair market value of the property

1 immediately before and after the damage, then this
2 difference in value is all that plaintiff may recover.

3 Damages must be reasonable. If you should find
4 that plaintiff is entitled to a verdict one or more of its
5 claims, you may award only such damages as will reasonably
6 compensate it for such damage as you find, from a
7 preponderance of the evidence in the case, that it has
8 sustained as a proximate cause of defendant's wrongful
9 conduct.

10 You are not to award speculative damages; that
11 is, you are not to include compensation for prospective
12 loss, which, although possible, is not reasonably certain
13 to occur in the future.

14 Defendant claims plaintiff failed to mitigate its
15 damages. If defendant proves by a preponderance of the
16 evidence that plaintiff did not make reasonable efforts
17 under the facts and circumstances in evidence to lessen
18 damages by failing to plant new trees or vegetation after
19 their removal, then you should not allow damages that could
20 have been avoided by the exercise of reasonable diligence.
21 Plaintiff, however, is not required to take measures that
22 would involve undue risk or burden.

23 Next, I will walk you through the verdict forms
24 and the interrogatories. And I'm going have you --
25 hopefully, you're at the last page of that document. If

1 so, set it down or aside and pick up the next stapled set,
2 which the top page should read the caption of the case and
3 say "interrogatory number 1," and if you look at me, I'll
4 know you're there. Thank you.

5 There are several interrogatories, ladies and
6 gentlemen, for you to use in your deliberations. And we'll
7 go through them one by one. Interrogatory number one asks
8 you to answer: Did plaintiff prove by a preponderance of
9 the evidence that defendant was negligent in the removal of
10 trees and brambles from Cambridge subdivision property?
11 And there's a space for a yes or no. You may circle it or
12 check it, just clearly indicate which your answer is.
13 There is a space on that form for all ten of you to sign,
14 and all ten of you must agree on the answer to this
15 interrogatory and to all the interrogatories.

16 At the bottom of the page as with all the pages
17 on the interrogatories will be further instructions on what
18 to do next. So once you answer this question, you then go
19 to the bottom of the page and it says if the answer of all
20 jurors is yes, proceed to interrogatory number 2.
21 Otherwise, skip interrogatory number 2 and proceed to
22 interrogatory number 3.

23 So let's continue to number 2, assuming for the
24 moment you've answered yes, you would then go to number 2.
25 And it reads: Did plaintiff prove by a preponderance of

1 the evidence that this negligence -- and that's referring
2 to interrogatory number 1 -- proximately caused damage to
3 the Cambridge subdivision? Again, a space for yes or no, a
4 space for all ten jurors, and then you proceed to
5 interrogatory number 3.

6 If you had answered no to interrogatory number 1,
7 you would have skipped number 2 and already been to
8 interrogatory number 3, which reads: Did plaintiff prove
9 by a preponderance of the evidence that defendant was
10 negligent in instructing Ric Man Construction to sever the
11 drainage pipe? Again, yes or no? Again, ten lines, and
12 again, at the bottom instructions to tell you what to do
13 next. If the answer of all jurors is yes, proceed to
14 interrogatory number 4. Otherwise, skip interrogatory
15 number 4 and proceed to interrogatory number 5.

16 Interrogatory number 4 reads: Did plaintiff
17 prove by a preponderance of the evidence that the
18 negligence was -- again, it's referring to interrogatory
19 number 3 -- proximately caused damage to the Cambridge
20 subdivision? Yes or no. A line for each of you, then
21 proceed to number 5.

22 Number 5 reads: Did plaintiff prove by a
23 preponderance of the evidence that defendant entered upon
24 the Cambridge subdivision property without permission from
25 plaintiff? This is the trespass claim. Yes or no, ten

1 lines, instructions at the bottom read, if the answer of
2 all jurors is yes, proceed to interrogatory number 6,
3 otherwise, skip interrogatory number 6 and proceed to the
4 appropriate verdict form.

5 Let's read number 6. Did plaintiff prove by a
6 preponderance of the evidence that this trespass caused
7 actual damage to plaintiff's property? Yes or no. Ten
8 lines, bottom instruction, proceed to appropriate verdict
9 form.

10 The last two pages in this are the verdict forms
11 in this case. One is the verdict form for plaintiff. One,
12 the verdict form for defendant.

13 And in no particular order, we'll start with the
14 verdict form for plaintiff. State the total amount of
15 actual damages, if any, proximately caused by defendant's
16 removal of trees and brambles from plaintiff's property or
17 nominal damages, if any.

18 So depending upon how you answered the
19 interrogatories, you may or may not be filling in a number
20 on this first line.

21 State the total amount of actual damages, if any,
22 proximately caused by defendant's diversion of water onto
23 plaintiff's property.

24 Again, depending upon how you answered the
25 interrogatories, you may or may not be putting a number on

1 this line. If you do have a number on both of these lines,
2 then the total dollar amount line, the third line,
3 should -- I hope it's clear -- equal the two lines above
4 it. But you may have a zero on one line and a number on
5 the other. I don't know. Again, a space for all ten of
6 you to sign on this page as well.

7 Verdict for defendant is the last form in this
8 stack of papers, and it reads: We the jury, duly impaneled
9 and sworn, find in favor of defendant. Ten lines, and
10 then, obviously, no lines for dollar amounts because
11 there's no award with this form for the plaintiff.

12 You will have, each of you, your own set of this
13 with you in the jury room. There will be a set for you to
14 complete that Carol will give you. It will be in a brown
15 envelope and that's the set that should be signed. You
16 only need to sign one set, not all of these, and that's the
17 one that you'll return in an envelope to Carol at the end.

18 We are now ready for the closing arguments of
19 counsel. I remind you that these statements are not
20 evidence, but rather an opportunity for the lawyers to tell
21 you what they believe the evidence has been in support of
22 their respective positions. And since plaintiff has the
23 burden of proof, plaintiff gets the first and last word.

24 And the floor is yours.

25 MR. ROBON: Thank you, Your Honor.

1 Good morning. This is the time in the trial
2 where I have an opportunity to summarize what I think that
3 we have proven during this week.

4 THE COURT: Marvin, I'm sorry. Either voice up
5 or mic or swing that other mic around.

6 MR. ROBON: This is the time where my job is to
7 point out the key elements of what our case is about, how
8 we've brought it together. We have to prove -- the
9 burden's on us. We have to prove that certain things
10 happened. We have to prove that there was a trespass, we
11 have to prove that there was damage result of the trespass,
12 which is the removing the brambles and the trees. We have
13 to prove that the city was negligent in severing the
14 24-inch drainage pipe and that we suffered damage as a
15 result of it.

16 You may ask yourself why are we here in federal
17 court? One of the reasons that -- is that when government
18 activities take place, you can make claims outside of state
19 court so that you don't have the influences of local
20 politicians and things like that. So in federal court the
21 plaintiff is at a disadvantage because the federal laws
22 require all of the jurors to unanimously agree on a
23 verdict. In state court in Ohio, only three-fourths of the
24 jurors have to agree. But in this case, we chose federal
25 court because we think we have a very strong case, and we

1 think that a variety of people like yourselves from all
2 over northwest Ohio wouldn't be influenced by the City of
3 Toledo.

4 It's interesting that we're coming up on Memorial
5 Day weekend, you know, when we honor soldiers, people who
6 have given their lives for our country. And when the judge
7 read the instruction to you originally, when you first got
8 here, he talked about your duty as a juror and the
9 responsibilities that go with it. And being a juror is one
10 of the most important things in our civil system, because
11 what it does, it separates the government from the people,
12 and it keeps the government in check from taking advantage
13 of people. It's like an eminent domain case. I try a lot
14 of eminent domain cases where if they widen the highway or
15 something -- and had one last year, Mrs. Labinski, they put
16 Route 2 within about 10-foot of her front door and said
17 there was no damage to her house. Well, the jury didn't
18 believe that. But The Court system gives the individual
19 the opportunity to seek redress against government
20 activities.

21 The evidence in this case, I think, is crystal
22 clear. The first thing I want to talk about, I guess, is
23 the severing of the pipe. I have in front of me Exhibit B
24 5 -- I'm sorry, Exhibit 45. It was showing up better
25 before. Right here is where this manhole is shown on the

1 railroad plans, and it shows that the drainage pipe comes
2 over to this ditch. It also shows that the two other pipes
3 go into the manhole here. So I don't think there's much
4 question that with these plans, an engineering department
5 or the City of Toledo should have recognized that that pipe
6 did go someplace, and it -- just severing it and make the
7 decision to sever it before they even dug it up is shocking
8 to me.

9 And one of the things that the defense is going
10 to talk about, they're going to give you what I call
11 excuses. First, they're going to say Mr. Huber from the
12 Wood County engineer's office said the water ran the other
13 way. So what? It's not his job. He said he had no
14 authority on railroad land, no authority on private
15 property. It's the city's job.

16 The next thing they're going to say, well, even
17 if we did cut it, it was clogged full of mud. Where are
18 the photographs? We heard from three different city people
19 who went and looked into that manhole. One said it had
20 garbage in it and that was Ric Man Construction. It had
21 garbage in it. The second guy from Ric Man said it had
22 water in it. The third first said it was full of mud. Did
23 it have all three? I don't know.

24 Then we talk about the next excuse. Laskey and
25 Mr. Taylor didn't pay their taxes. And they said they

1 didn't pay them, I think, for five years. Well, that's not
2 true. And I think you all -- when you get your tax bills,
3 you recognize that you're paying taxes for the prior year,
4 so when they didn't pay their taxes in 2004, the second
5 half, that was really for the second half of 2003, because
6 your taxes right now, your next tax bill is going to come
7 out most likely is for 2007.

8 They're going to say no lots were selling in the
9 subdivision. True. True. But I analogize that to
10 Mr. Taylor having broken his arm, and he can't work for a
11 short time, and then someone comes along and cuts his arm
12 off. There was no way today, when this subdivision -- that
13 anybody is going to buy a lot without corrective action,
14 just not going to happen.

15 And then they're going it say, well, we didn't go
16 back and plant any trees. No, we didn't, because we went
17 back one day, one day -- and that's all you heard about is
18 we covered up the evidence. Well, we uncovered it. And
19 then the city surveyor never went back, ever, and looked at
20 the evidence, the defendant's own evidence, Exhibit B-2,
21 never went back and looked at the brush and the brambles
22 that you can see here to see where they were.

23 The other thing, the drawings that the city did,
24 you'll have them. Take a good look at them. They're not
25 signed. They're not sealed. There's no scale. And by

1 scale, I mean quarter inch equals a foot or quarter inch
2 equals 30 feet. There's no date on them. And most
3 interestingly, there's no brambles or trees shown. All it
4 is, is a sketch.

5 And think about this, the gentleman that was on
6 the witness stand from the city, he's the guy that screwed
7 up originally. And it would be like a doctor in a
8 malpractice case saying, no, no, I'm an expert, this didn't
9 happen.

10 We have an expert who came in from Findlay, Ohio
11 who did a drawing and a survey he signed it, it's sealed,
12 it's got a scale on it. This is unrefuted. Where is the
13 city's expert? They didn't have one. They just had a city
14 employee.

15 Then on the severing of the pipe, there's another
16 excuse, the subdivision flooded beforehand. Well, you
17 heard Mr. Jenkins, who they called, who was the engineer
18 from Peterman who designed the subdivision, in five years
19 after the subdivision was built, he was never called once
20 about any problem with flooding on the subdivision. Yes,
21 Mr. Laskey in his deposition said there was some ponding,
22 but guess what? Mr. Laskey can't hear. And if you read
23 his deposition, you'll look at some of the answers and
24 think, where did that come from? And he's proud, he needs
25 hearing aides. He does wear them sometimes. I -- I

1 sympathize with him, but there was no flooding on this
2 subdivision prior to the city severing of that pipe.

3 MR. BAHRET: Objection, Your Honor.

4 THE COURT: This is argument of counsel, and I've
5 instructed the jury that this is not evidence, and they can
6 rely on the evidence in the case, unless there's some
7 specific objection you want to make with me.

8 MR. BAHRET: Sounded to me like he was
9 testifying.

10 THE COURT: I've already instructed the jury that
11 comments of both counsel are not evidence in the case.

12 MR. ROBON: When we look at this drawing and we
13 just think logically, we don't have to be experts, we think
14 logically, we have water, the testimony has been it drains
15 down this way. This is the lowest area within a mile.
16 Water goes down hill. We all know that. Well water goes
17 into this pipe.

18 Which interestingly, Cindy Soncrant didn't even
19 know existed. As many times as she was out there, she
20 didn't know it existed. It became if it gets into this
21 pipe and it's draining down here, it's got to go someplace.
22 And what it's doing, it's going right back up in here.
23 What has to happen is that that pipe cannot any longer be
24 reconnected.

25 They put a person on the witness stand

1 yesterday -- I think it's their Exhibit K -- that they said
2 that the pipe, the catch basin was so deep, Mr. McCarthy
3 says there's no way, without removing that 55 or 66-inch
4 pipe, they could ever run a line. Even they wouldn't give
5 us permission any way.

6 Think about this: The last day, after two years,
7 they come back and say, well, this can be fixed this way.
8 Why haven't they done it in two years? They're not going
9 to do it. They're -- they never intended to do it.
10 They're denying all responsibility here. So what we're
11 going to have to do is, we're going to have to cure it out
12 this way someplace. And it's going to cost a lot of money
13 to do that.

14 Now, one of the interesting things is
15 Mr. Stawinski came in and said there was a \$355,000
16 reduction in value of the subdivision lots, but he had
17 about a \$600,000 value of the lots, not the house, just the
18 lots, after this happened.

19 Mr. Dominee, the city's appraiser, came in and
20 said this here is the actual value of not only the lots,
21 but the house. And he said the reduction was only \$20,000.
22 When he subtracted the house, he used the present value.
23 He said the house is worth 310,000, but in his formula, he
24 had to discount it because you may have to carry it for a
25 year or so. So what he did is, he says the lot's actually

1 only worth \$338,500. And if that's the case, I mean, we
2 rely on part of the plaintiff have been damaged.

3 How many of you watch David Letterman?

4 MR. BAHRET: Objection, Your Honor.

5 MR. ROBON: Nobody?

6 I stole something from him. He uses the top ten
7 list of what he does and has a different one every night
8 and I'm a night owl.

9 The City of Toledo made a mistake in its survey.
10 I think we've clearly proven that. There was no reason to
11 cut the trees all the way up to what the city thought the
12 property line was. Couldn't they have stayed 5 feet away?
13 10 feet away? If they would have stayed five or 6 feet
14 away, other than for cutting of the pipe, we wouldn't be
15 here, because they encroached five to 6 feet. But in that
16 five to 6 feet, the brambles were thick, and not only
17 thick, they hung over several feet up in the air. There
18 was no reason for the city to get so close that they
19 trespassed upon our property. There's just no reason for
20 it.

21 The city didn't even show the Cambridge
22 subdivision on its plans. Why not? Why not show that
23 there are houses and lots backing up to this property?
24 It's not like it, you know, it was up against the hospice
25 which we heard about or the W.W. Knight Preserve. You

1 know, those were all woods. So if they took out a few
2 extra trees there, didn't mean anything. The city spent
3 \$50 million on this project, but it ignored the harm that
4 it caused to the plaintiff.

5 The city's making a huge profit on this project.
6 They're selling the water, that's why that project is in
7 there. It's not a municipal service for the citizens of
8 Toledo exclusively. They're selling water in Wood County
9 and making money. It's a business. The city paid CSX
10 2.1 million for a right of way.

11 How much it would have cost to dig that pipe
12 three or 4 feet deeper? I asked everybody and no one would
13 give me an answer. My guess, probably, a thousand dollars
14 or less. But they just chose not to do it.

15 The city ignored warnings from both the Wood
16 County engineer -- I'm not sure, but I think it goes this
17 way -- and John McCarthy, who was an engineer. McCarthy
18 said to them e-mails, don't let this happen. And they
19 ignored it. The city abused its power and it hurt the
20 plaintiff financially.

21 You think about a beautiful subdivision that that
22 was -- it was like an encampment, surrounded by beautiful
23 foliage, fences, trees and then the starkness. And when
24 you think about the starkness, you stand in front of
25 Mr. Stawinski's driveway -- let me find the photo here --

1 and you look out and all you see are railroad tracks or
2 worse yet, you see a train. And looking at that, nobody's
3 going to buy a lot, you know, unless you're going to put a
4 very small house on it.

5 And then lastly, the plaintiff has been damaged
6 financially by both the trespass and the flooding, and the
7 city just doesn't care. They refused to accept
8 responsibility. And then you ask yourself, Mrs. Soncrant
9 is here, where are the city administrators who knew about
10 all this? They're dodging. They don't want to face this
11 jury. They sent her to take the blame.

12 Now, if you agree with what we've said, then
13 there'll be an issue of damages. And damages are not to
14 make the plaintiff have a profit or anything like that,
15 damages are to give the plaintiff -- put them back in the
16 position that they were in. And I look through all of
17 these things and these are not to be totaled, these are
18 alternate type things, but the one undisputed damage is the
19 house on lot 15.

20 Would you pull that -- that first one, there we
21 go.

22 Exhibit Number 93 -- this has way too much of a
23 zoom on it -- this is lot 15 which is where the house is,
24 and you look at the size of the tree stumps that were cut
25 right up against the railroad fence and the testimony is

1 that that railroad fence was on the property of Old
2 Granite, pushed over. When you take a look and you see
3 diminishment of value of the spec home on lot 15, the cost
4 was 539, 000. Mr. Domini said it's worth 310 today, up
5 here at a discount, I think he had it at 248, but there is
6 no dispute about that amount. That house has really lost
7 its value. McCarthy said he'd pay 275 for it. But that's
8 the first element of damages.

9 Then what is the damage to the subdivision itself
10 by the cutting of the trees? Mr. Keesey had a number of
11 335. The judge instructed you that if we can cure a
12 problem, then we have a duty to do that. We brought in
13 Mr. Herrett, they did not bring in an arborist.
14 Mr. Herrett said one important thing, you can't plant trees
15 where there's water.

16 Number two, you're going to have to bring top
17 soil in. His estimate to replace the trees was \$134,000,
18 but he said they were only five or 6-foot tall, and it
19 would take ten years for them really to be replaced. And
20 he put a value of \$33,500 per lot that was affected, and he
21 said there were five lots across the street that were
22 affected because they look at it just like Mr. Stawinski
23 looks at it.

24 So -- and then you take Mr. Jenkins said top soil
25 was about 20 yards -- 20-dollar a yard. If you build a

1 wall 9-feet high, 10-feet wide, roughly 500-feet long, it's
2 45,000 cubic feet divided by yards. There's 27 cubic feet
3 in a yard, you multiply it out, you got 33,000. If you
4 build a bigger wall, a mound, you've got to have a bull
5 dozer, you know, there's going to be extra expense, but
6 this item and this item and this item go together or it's
7 this item.

8 And then we talk about how do we solve the water
9 problem?) There are three different things that were
10 spoken of. Mr. Huber said it would cost roughly \$200,000
11 for a pumping station. We may not be able to do that
12 because we would have to get permission from CSX. They may
13 just say no. In addition to that, we would have to get
14 permission from the adjacent property owner where that
15 manhole is. They can say no or they can say, you know,
16 give us 25,000, 50,000, otherwise, we're not going to let
17 you do it. So we looked at putting a separate line out to
18 River Road, the estimate was \$200,000. There's no contrary
19 estimates from the City of Toledo. The City of Toledo
20 didn't bring an engineer in here and say that could be done
21 for 150 or 120 or anything like that. They didn't do that.

22 Then the question is, will a retention pond be
23 necessary? You heard the city's own expert Todd Jenkins
24 say very well could. They don't want all that water
25 rushing into the rivers and creeks, you know, as the rain

1 comes very fast.

2 You heard Mr. Laskey talk about the cost of
3 canceling the auction, paying for the brochures, and so
4 forth. The auction was canceled because who is going to
5 buy a lot and what reputation would the subdivision when,
6 you know, dozens or hundreds of people come out and they
7 see something like this? Nobody, just not going to happen.

8 So when you talk about damages, you have one
9 element here or here, and you have the second element, the
10 spec home damages. And then you have the third element,
11 the ponding of the water. And then you have, you know, a
12 few dollars on the expenses for canceling the auction, but
13 that's minor. I put other things down here, interest
14 expense, I know, it's questionable. I didn't put a dollar
15 figure, a couple of years taxes, questionable. I didn't
16 put a dollar figure. But when you add these numbers up,
17 we're talking about significant dollars, but you're talking
18 about a subdivision that \$2 million was spent on the thing,
19 and there have only been eight lots sold. And if you look
20 at what Mr. Domini says, the whole thing is only worth
21 338,850. Somebody has really been harmed here.

22 The Court already indicated to you in
23 instructions that if the city directed the contractors to
24 do certain things to sever the pipe or to cut the trees,
25 the city's responsible. They have the liability. When you

1 deliberate, you'll ask yourselves why are we here? And the
2 reason you're here is the City of Toledo administration,
3 the Finkbeiner administration simply says no, the hell with
4 you. We are not going to pay. We didn't do this and we
5 think we have defenses --

6 MR. BAHRET: Your Honor, I object to this.

7 THE COURT: I'm going to sustain that objection.
8 I'll have the jury disregard that comment of counsel.

9 MR. ROBON: Thank you, Your Honor.

10 The city government has simply felt they had
11 enough excuses to take the case to a jury and try and
12 convince you folks --

13 MR. BAHRET: I object to this also.

14 THE COURT: Lets keep our focus on what the
15 evidence -- what you believe the evidence is, please.
16 Thank you.

17 MR. ROBON: Thank you, Judge.

18 The -- but what you heard from the witness stand
19 from the defense, you heard excuses.

20 And think about this, we brought our appraiser
21 in. They brought one in. Their appraiser says the thing
22 is worth less than our appraiser. Although our appraiser
23 says it was worth a lot more before the brambles and trees
24 were cut down. We brought an arborist in. They didn't
25 bring anybody in. We brought an outside licensed engineer

1 surveyor in -- or I'm sorry, surveyor. They didn't. The
2 cost of getting a survey is probably \$2,000. Why not?
3 Because they didn't want any other third party to confirm
4 what Mr. Nye did.

5 And then they say, you know, we covered up -- we
6 covered up the mud. Well, we then went back and exposed
7 the roots so everybody could see. And then they kind of, I
8 felt, accused that somehow we had a bulldozer over there
9 and were picking up the tree stumps and the roots and were
10 moving them. I was kind of surprised by that attitude of
11 the city. They know darn well that those roots and trees
12 where they were originally.

13 But these are the things that you'll have to take
14 into consideration when you go into deliberations. We hope
15 that you will find for the plaintiff. I'll have an
16 opportunity to address you again after Mr. Bahret gives you
17 the city's side of the case.

18 Thank you.

19 THE COURT: Thank you.

20 Bob?

21 MR. BAHRET: Good morning. Please The Court,
22 counsel, ladies and gentlemen.

23 This is my opportunity to tell you what I think
24 the evidence showed and also to talk to you about some of
25 the matters that Mr. Robon just discussed. I hope you

1 understand that he gets an opportunity to come up here
2 after I speak, and I'm not even allowed to respond. I'd
3 ask you and your wisdom, you probably can figure out what
4 sort of things I'd say and keep that in mind. I'm not
5 allowed to respond to that final argument. The judge
6 already told you he gets the last word, and it's because he
7 has the burden of proof. And the city does not. And
8 that's the law's way of kind of evening up the scales, give
9 somebody the last word, it's a powerful tool.

10 Now, with that in mind, you've probably sensed
11 already that what counsel wants you to do is get mad at the
12 City of Toledo. I hope you understand that getting mad at
13 the city is not part of your function, you're supposed to
14 decide the case without emotion and not let a verdict be
15 impacted upon by whatever your feelings, your personal
16 feelings might be. Frankly, I don't think the city has
17 taken an unreasonable position, and I am absolutely
18 outraged by a suggestion of counsel that the city didn't
19 try to be a good neighbor and come to an accommodation.
20 I'm outraged by that. He's arguing outside the record, not
21 within the bounds of the law. We're supposed to follow the
22 rules, and we're not allowed to talk about efforts to
23 resolve a dispute, so let's put all that aside.

24 What we have here is a situation where a
25 plaintiff is trying to claim damages far beyond whatever is

1 reasonable. They're trying to claim rights to things that
2 they never had before. You have in front of you a
3 plaintiff -- that wants to pretend that this was a viable
4 subdivision when it was, in reality, dead. You want -- we
5 have a plaintiff that wants to claim that they had this
6 perfect shield behind the subdivision, hey, I didn't know a
7 train was there. But yet everybody acknowledged they did
8 know a train was there. You could see it, and
9 historically, it is proven that nobody wanted one of those
10 lots.

11 We have a -- we have a plaintiff in front of us
12 that's claiming damages for lots across the street, all
13 these lots over here, four through eight, are supposedly
14 claiming damages for trees taken down from neighboring
15 property. You know what? Even if those trees were taken
16 down from Cambridge property, they don't have the legal
17 right. We talked about this in voir dire.

18 This Stawinski who lives here, whoever's not
19 here, they're not even parties this case. They don't have
20 the right to claim damages. Even if lots, 13, 14, and 15
21 were solid woods, not even a house there, solid woods and
22 we knocked every tree down there, they're out of luck.
23 That's the law.

24 The trees -- and on page 8 of your instructions,
25 the judge specifically tells you to be actionable, the

1 trees must be on their property, not the railroad property,
2 not anywhere else.

3 Ladies and gentlemen, let's talk about the issues
4 separately. First, the trespass issue. I don't quite know
5 why it's offensive that we would bring the people that did
6 the survey in to describe what they did and what they
7 checked afterwards, but that's what we did. They're the
8 people with the most knowledge. And they're qualified and
9 the two of them are licensed and was under them. They're
10 qualified and they checked -- and I hope you noticed in the
11 surveys that they did, they didn't just go up and say, oh,
12 here's a fence, let's, you know, we're just going to peg
13 along the fence. They -- they described carefully what
14 they would do, they'd go up this -- whatever their
15 measurement was -- they called it an offset, if you
16 remember -- that agree to that measurement, if it didn't
17 conflict with anything, great, we'll mark there. If it
18 conflicts, we'll give honor to what it conflicts with,
19 we'll back up. That's what they said, that's what they
20 did.

21 And you heard Nick Nye, who was the Peterman guy
22 that did that one exhibit -- excuse me -- show
23 encroachments. He specifically said that is an acceptable
24 way to do things in the survey industry. It may not be the
25 way he would have done it, but it is an accepted technique.

1 So then after the fact, they're out there trying to figure
2 out where the line is. Did we encroach or not? We were
3 out there trying to figure it out. We didn't just ignore
4 them. We went out there, more than once.

5 And what, finally, the conclusion was that there
6 may have been over towards lot 16, that's the interesting
7 thing. Over towards lot 16, maybe as much as 4-inches of
8 an encroachment. Plaintiff's survey says there was no
9 encroachment on lot 16. And so coming down 4-inches down
10 to zero by the time you get down to lot 14, you know,
11 4-inches, 2-inches, ten, how big of a -- how many trees or
12 brambles are removed in an inch if there was an
13 encroachment at all? And I respectfully submit that the
14 answer is nothing of any consequence could possibly have
15 been removed.

16 We know for a fact that the plaintiff in this
17 development cleared things behind that subdivision. In
18 fact, we know they had to. They were required by their own
19 drainage plan that they filed and got approved right here,
20 says the contractor shall clear and grade all rear lot
21 lines for pipes, utilities and drainage. In fact, you'll
22 see on the construction plans -- this, by the way, is page
23 9 of this huge document over here, multiple drawings.
24 These are the plans for the subdivision drawn up by
25 Peterman. The drainage plan is page 9. On other pages

1 you'll also see that there's an easement along the back of
2 the subdivision, I think it's 30 feet. And "easement,"
3 meaning any of the utilities could come in there and dig
4 everything up and have no duty to put anything back, dig it
5 up to put their utilities in or out or repair them --

6 MR. ROBON: Your Honor, I'm going to object to
7 that because most easements don't say that.

8 THE COURT: Well, the jury can read the document
9 and determine what it wishes.

10 MR. BAHRET: Thank you.

11 So what I was getting at is, we know the
12 plaintiff, the developer, their contractor, cleared things
13 on the back. They admit it. In fact, you might remember I
14 asked Mr. Laskey who cut down the trees that were further
15 away than what you claim we encroached on? He doesn't
16 know, but he assumes maybe they were dead or dieing and
17 somebody cut them down.

18 You heard testimony from -- frankly, I forget
19 which witness it was, I think it might have been Carl
20 Copox -- but when he's out there doing work, people are in
21 Cambridge property, he thought they're working for McCarthy
22 cutting trees down in there -- it wasn't Copox because his
23 company removed, if they cut a tree down, they took it and
24 mulched it and sold the mulch. They didn't leave any trees
25 there. If they cut them, they took them. So if somebody's

1 cutting a tree with a chain saw on Cambridge property,
2 that's them, not us or any agent of ours.

3 Now, how do you know that the trees that were
4 found were cut by Vermillion as opposed to cut a year or
5 two earlier or even that year by them? There's no evidence
6 on that point, none.

7 So what you're left with is testimony that we
8 should only focus on these four lots are the only ones
9 where they even claim anybody encroached. They don't claim
10 anything on 16 or 9, 10 or 11. And you know that there are
11 no trees behind nine, ten and 11, none. And you know that
12 everybody would be able to see the railroad, even if lot
13 12, 13, 14, 15 were solid woods and there were no houses
14 there, we'd still see the railroad. We'd still hear the
15 railroad.

16 And we'd still have trouble peddling those lots.
17 You saw the preconstruction video, and I think that thing
18 speaks volumes. In the preconstruction video, you didn't
19 have any trouble seeing that spec house. You didn't have
20 any trouble seeing the dirt that had been brought in to try
21 to raise up lots nine, ten, and 11, all piled up over there
22 and you didn't have any trouble seeing it because it's not
23 this huge line of brambles and trees that they pretend was
24 there. Sure there was some trees and brambles there, but
25 not this screen that just made the railroad, you know,

1 you're oblivious to a train. It wasn't like that, and that
2 video proves it.

3 The -- the -- the value issue, they bring in an
4 expert that says that this place has substantial value. He
5 said they probably weren't selling lots because they were
6 overpriced even before anything was done. Why have they
7 not tried to sell anything since the trees were cut?
8 Mr. Laskey says what's the point? You know, their own
9 expert says they're still have value, so sell them for what
10 that value supposedly is or at least try to, you know.
11 Instead, they want to just say, look, he wants to say
12 despite their own expert, that the place is worth nothing,
13 and so I'm not going to make any payments on it, and I'm
14 going to charge the city for my payments and my interest.

15 I'm not going to pay taxes. And oh, by the way,
16 I haven't paid them since 2003, but it's your fault, City
17 of Toledo. It's all your fault now.

18 The neighborhood, the subdivision, was simply not
19 suitable for the market. And the -- did you notice in the
20 comparables when they -- they came up with comparables near
21 railroads elsewhere. And I don't want to be a snob when I
22 say this and I hope you don't take it that way, but did you
23 notice that those comparables were all substantially
24 smaller more affordable homes? The intent of this
25 neighborhood was to go for the wealthy, the richest of the

1 rich. If you are that rich, are you going to back up to a
2 railroad or are you going to go out somewhere different?
3 And I respectfully submit you're going to go somewhere
4 different. You're going to go to an exclusive neighborhood
5 that doesn't have those noise obstructions. You're not
6 going to build your house next to the airport. You're not
7 going to build your house next to a, you know, a train
8 station. You're just not going to do it.

9 Now, let's talk about the -- the water for a
10 minute. The plan that counsel showed you where he claims
11 this shows other pipes going into the catch basin, that's
12 ridiculous. It's showing you the property line. You can
13 look at the plan. It's not showing pipes.

14 You heard the testimony from the experts that
15 actually know how to read these things. The only thing
16 that was depicted on the railroad plan that Mr. Huber
17 brought out there was the pipe under the abandoned right of
18 way. It's a 24-inch culvert and they call a culvert a
19 pipe. You and I might call it a pipe. It doesn't show
20 where that went. It doesn't show where anything else was
21 going, it just shows a 24-inch diameter pipe and it -- and
22 it says the length of it. That's all the information that
23 was there. That's why Mr. Huber didn't know what this pipe
24 actually did.

25 By the way, speaking of Mr. Huber, again, a

1 little infraction that kind of frosted me, Huber
2 specifically told you that he told the city that he is --
3 his opinion was that water was coming from the railroad to
4 private property. You heard him say that. He also
5 specifically told you that he never told Christy Soncrant
6 or anybody associated with the city or Ric Man or anybody
7 else anything different, and the reason was because he
8 didn't tumble with that information until long after the
9 fact, so he figured why bother.

10 You heard Mr. Robon say something that's, again,
11 improper, shouldn't have heard it. He said, well, maybe
12 that was the deposition. That comment is outrageous,
13 outside the rules.

14 Who here really thinks if Huber said that in the
15 deposition -- which I'm here to tell you he did not -- who
16 here thinks if he had said in deposition, oh, yeah, I told
17 the city that, that he wouldn't have hit him over the head
18 with that comment? You know his attitude to the city, he
19 would have been flaring that thing up here and had it under
20 this little device showing Huber you said you told the
21 city. Reason he didn't do that is because it didn't
22 happen.

23 Huber never has claimed he told the city. He's
24 always claimed exactly what he told you from that stand, he
25 never told the city that he came to information that the

1 pipe, if it's working, if it's working, it would be moving
2 water the other way.

3 Nobody has refuted the fact that that pipe simply
4 was not operable. You heard the testimony that the
5 conclusion was -- and I submit to you it's a reasonable
6 conclusion -- that the pipe was simply abandoned. It's
7 old, it was dilapidated. It's under an abandoned railroad
8 line. What function was it serving? Nobody could figure
9 out what function it was serving. And in fact, believed at
10 the time that if they severed it, it might actually -- if
11 it were transporting water, they might actually be doing a
12 favor to the landowners next to it, but yet they want you
13 to act like the city is unfeeling.

14 Why hasn't the city put a pipe back in? You
15 heard Christy say -- now he's got me calling her Sandy --
16 you heard Christy say that she doesn't really believe
17 putting that pipe back in would solve the problem because
18 she doesn't believe that's where the source of the water
19 is. That's why it hasn't been replaced. But it doesn't
20 mean they're entitled to anything more than that if that's
21 the source of the water problem. You know, they come up
22 with estimates. If, you know, we had ponding there -- in
23 fact, the guy that lived there all his life called it
24 flooding there for as long as he's been alive. As long as
25 he's been alive is what he said, and I think he was 52. So

1 obviously long before any pipe here was cut, but they don't
2 want to acknowledge that. They want to claim there's
3 flooding only because of the city activities.

4 On the flooding issue also, there was no evidence
5 that there was any ponding or flooding on any of these lots
6 back here except Laskey now claiming, no pictures. And if
7 you believe McCarthy even when he's outside with a video
8 camera trying to take pictures where it's coming from and
9 where it's going, didn't go down there and look. Oh, I
10 never looked down there. Who really believes you wouldn't
11 look for the sources of the water if you've got your video
12 camera documenting evidence when you're trying to do it?

13 And also keep in mind and you've got the diagrams
14 in evidence. We create a major dam with dirt here. We,
15 being McCarthy in his wisdom, dumping a bunch of dirt here
16 stopping everybody said the water, generally, this is the
17 low spot, water's generally going in this direction from
18 left to right on this screen here. Well, it can't move
19 with this dam, so if there's any ponding over here, you
20 know who's fault that is?

21 And this -- the pond behind 16 -- this one
22 mystifies me -- you have a person who says that there's
23 pipes going along the railroad right of way moving water.
24 This is the low spot. So water's coming down from both
25 directions. And I'll just knock a hole in that pipe full

1 of water and put a pipe out here in the back of lot 16 and
2 I'm going to make things better. I submit that makes no
3 sense. What that's going to do is feed my pond. It isn't
4 going to make water move out of my pond. It's going to
5 make water go into my ponding problem.

6 On the -- their arborist, they say we didn't
7 bring in an arborist and that's another bad thing for the
8 city. We had an arborist scheduled to testify. The
9 decision was to either let Mrs. Soncrant talk about his
10 opinion or you'd be hearing evidence this morning. I told
11 you he was out of town because his mother is dieing of
12 cancer, so we didn't bring him here personally.

13 But our arborist who gave the information to
14 Christy says that we could put trees back in here, same
15 thing Bob Domini actually came up with, actually. Our guy
16 says for \$22,500. Domini said about \$20,000. And it will
17 actually be a lot more trees than even they allege were
18 removed. And it would be decorative brush, not scrub brush
19 or leaves or brambles, it would be decorative stuff that
20 would enhance things.

21 But yet what they want is this big mound and top
22 soil and improve the soil better than it ever was before.
23 They want betterment. They want a mound that they never
24 had before. They want more trees than they ever had
25 before, and they want a more impenetrable barrier than they

1 ever had before, and they want it all on the City of Toledo
2 nickel.

3 The -- their arborist, I mean, maybe I don't
4 quite understand the logic, but even though he comes up
5 with a much higher number to fix this, \$134,000, even
6 though that's the same fix that would apply for these other
7 lots, the people -- a couple of them who aren't even
8 parties in the case -- he wants you to ascribe the same
9 number up there. So what he is he doing, because there's
10 more lots involved here than the three lots down here, he
11 actually is almost tripling the claim damage that -- the
12 fix it damage, because he wants to ascribe value the same
13 fix.

14 Fix is everything, so why -- if you decide that
15 it costs \$134,000 to plant all these trees, don't lose
16 sight of the fact that that fixes this. You don't award it
17 two or three times.

18 I know Marve loves his top ten stuff, comes up
19 with these every case. And the theme here is the City of
20 Toledo, bad City of Toledo, keep in mind, like things, like
21 number 9, no reason to cut trees all the way up to what the
22 city thought was the property line? What he's trying to
23 get you to do is award damages for something that legally
24 you're not allowed to award damages for. He wants you to
25 award damages for the removal of trees on the railroad

1 property line.

2 MR. ROBON: Your Honor, I object it that. We
3 never asked for that.

4 MR. BAHRET: Then why did you put this here?

5 THE COURT: Again, gentlemen, let's keep your
6 comments focused, please, and you should be talking to the
7 jury, not with each other.

8 And again, ladies and gentlemen, I'll remind you,
9 comments of counsel are not evidence in this case, and you
10 may choose to believe or disbelieve the arguments of
11 counsel.

12 You may proceed.

13 MR. BAHRET: Thank you, Your Honor.

14 Legally --

15 THE COURT: And let's not talk legally, please.
16 The instructions on legally come from me.

17 MR. BAHRET: I submit to you the city had every
18 right to go right up to the property line if it wanted to
19 or needed to, even if it didn't need to. It's not
20 actionable unless those trees and vegetation were removed
21 from Cambridge. And the judge just told you that on page
22 8. So the judge has already told you that for it to be
23 actionable, the vegetation must be removed from Cambridge
24 property, yet they're making an argument that we shouldn't
25 have gone as far as the property line, even though there's

1 no prohibition against that.

2 He says there's no reason for the city to get so
3 close, but yet you heard from the people that installed the
4 pipe, they needed all this space. In fact, they
5 artificially created more space on the other side away from
6 Cambridge, I think, by filling the ditch temporarily so
7 they could who have their equipment, and then digging it
8 back out as they go. They needed all that space.

9 The idea of huge profits, what do you think
10 that's all about? Big bad city again. There's no evidence
11 of how much profit, if any, the city made. They spent
12 \$50 million on it, I doubt they made 50 million bucks on
13 water so far.

14 And abused its power, the city abused its power
15 and hurt the plaintiff. The city didn't abuse any power.
16 It's trying to put a water main in there. That's not an
17 abuse of power. That's trying to service citizens. The
18 water main goes from the City of Toledo through Wood County
19 back to the City of Toledo, and it was designed to be a
20 backup. You heard Christy say the primary purpose is a
21 backup in case the other water main broke. And it also
22 happens to serve LOF, one of Toledo's largest employers.

23 On the crossover pipe issue that Mr. McCarthy
24 says, actually Mr. Robon says you couldn't put it back in.
25 Measurements were done, Christy made the calculations, and

1 that crossover pipe could be put back in if you conclude
2 that the crossover pipe issue is what causes the flooding.
3 It could be done.

4 We don't -- it's true, we don't believe that's
5 the fix. But if you don't believe that that crossover
6 pipe, replacing it would fix the problem, then you've
7 proven my point, that cutting it didn't create the problem.
8 And therefore, all this other noise about retention ponds
9 and sewers going out to River Road, all of that just is
10 betterment for the plaintiff to help a situation that was
11 there any way.

12 On the retention pond issue, by the way, I hope
13 you know they've ramped up their numbers. The guy that
14 actually built a retention pond said he could do it for 35
15 or \$40,000. That was Taylor, but yet they come -- McCarthy
16 says, oh, no it's going to take \$200,000 for this pond.
17 That's similar to all of the numbers they've got on the
18 board. They're all ramped up.

19 When you go back in that jury room, you need to
20 consider why did they not sell any lots for two-and-a-half
21 years, but yet they're telling you these lots would be
22 going like hot cakes but for the removal of a few trees?
23 Ladies and gentlemen, I submit to you that there is
24 insufficient evidence, in fact, there is no credible
25 evidence to show that lot sales have been negatively

1 impacted because of the removal of those trees, none.

2 I also submit to you there's insufficient
3 evidence to show that cutting that crossover pipe has
4 affected the ponding of water situation. Remember the fact
5 that Mr. McCarthy made some modifications, shall we say,
6 including creating an earthen dam, which did cover up
7 evidence. And that earthen dam, not only covers up
8 evidence of the trees and brambles, but it prevents the
9 proper flow of water pursuant to that drainage plan that
10 Mr. Jenkins came up with.

11 And knocking a hole in the railroad pipe didn't
12 help things either. Jenkins didn't even know that.

13 You know, I asked him that question cold.
14 Usually an attorney isn't supposed to ask a question in
15 court unless he already knows the answer. I didn't know
16 what he'd say. You could see the shock in his face.

17 Why on earth would somebody put a hole on the
18 side of that pipe? That's going to make things worse. I'd
19 recommend they plug that back up.

20 When all is said and done, if you believe there
21 was a trespass, the judge has told you that you have to, at
22 least, award a buck, nominal damage.

23 If you don't believe there was a trespass -- as I
24 don't -- then that should be found in favor of the city.

25 If you believe that there was not only a trespass, but an

1 appreciable amount of trees that you can measure or value
2 of those trees was taken down and you would have to award
3 some damage number for that.

4 But keep in mind, you've got some -- some
5 estimates for what it would take to actually put some tree
6 itself, including Domini talked about river birch. I don't
7 know if you know river birch. It's a beautiful tree and it
8 grows fast. By the way, it likes water. So you can put
9 stuff back in there, if you really wanted to.

10 The judge is instructing you on a duty to
11 mitigate damages. You've got a plaintiff saying I can't
12 sell lots because I don't have vegetation back there, and
13 in two years has done nothing to put vegetation back there.
14 If that's all it takes to sell lots is put some trees in,
15 then put them in. I think the plaintiff knows that isn't
16 going to sell lots.

17 The water issue for you to be convinced that the
18 city is liable in damages for that, you've got to be
19 convinced that the cutting of the pipe is the cause of the
20 water. And in view of the fact that you know they had a
21 water problem back there even before the pipe was cut, then
22 you must have sufficient evidence before you can award
23 anything as to how to measure the difference, how much
24 worse. How often is the water there? Does the water have
25 anything to do with impacting sales of lots? And I submit

1 the answer to all of those things is no. There's no
2 evidence that cutting that pipe caused anything.

3 So with all -- when all is said and done, I'm
4 asking you to return a verdict in favor of the city on all
5 issues. And it's not because the mayor didn't come here
6 personally to explain something that he really wasn't ever
7 really involved in. The person that was involved in it is
8 the person before you. That's why she's here. She's not
9 here because she's -- the mayor sends her over here to take
10 a fall like Mr. Robon wants you to believe. She's here
11 because she's the one involved in the project. If I
12 brought the mayor or somebody like that who would just sit
13 there like a bump and not be able to testify to anything,
14 that would be the insult, not bringing the person that
15 really knows what's going on.

16 As I told you before, when I sit down, I'm not
17 allowed to come back up here and address any other things
18 Mr. Robon said. But I think you know the arguments that we
19 would make.

20 Ladies and gentlemen, jury service is important,
21 I agree with Mr. Robon on that. I really do. It's a tough
22 job. You've put in a long week, and we thank you for that
23 service.

24 Everybody comes into court saying they want
25 justice, and it's -- it's true we want justice. But keep

1 in mind, justice is not necessarily synonomous with money.
2 Sometimes justice means just saying no.

3 Thank you.

4 THE COURT: Rebuttal?

5 MR. ROBON: Thank you, Your Honor.

6 First, I never had a defense lawyer use my board.

7 When you go into the jury room, you're going to
8 have a number of exhibits. What you want to remember is
9 the flooding. I believe Ms. Soncrant said -- I may have
10 made a mistake. If we look at the very -- I think it was
11 the first witness, Mr. Sumner, lives over here on Bates
12 Road, he said all these people on Bates Road drain their
13 septic tanks into this manhole. Obviously, they drain
14 their eavesdrops and everything else into it. That's what
15 that was designed for, is to take care of this bad water in
16 that area.

17 Because when the railroad was constructed, the
18 railroad is always raised, it's always raised 6 or 8 feet
19 so it's never under water. And when they raised it, they
20 had to make sure that the water that was over here got into
21 a ditch. It's the purpose of that manhole. And everybody
22 knows it, except the city refuses to acknowledge
23 responsibility for it.

24 Say it was plugged, 24-inch tile, if it was
25 two-thirds plugged, it will still work, it's like an old

1 car. You can have a 15-year-old car that has holes in the
2 fenders that, you know, maybe the radio doesn't work, but
3 the car can get you back and forth to work, so you use it.
4 We're not saying that that pipe was new. We're saying it
5 functioned.

6 Then take a look at the exhibit with these
7 monuments. The city never said that they found the
8 monuments when they did their original ribbons. How they
9 missed them is beyond me because they stick up out of the
10 ground.

11 They said Mr. Herrett says the brambles are not
12 real thick. We had two witnesses identify brambles. You
13 take a look at this Exhibit 19. Those look pretty thick
14 and those don't have leaves on. You can imagine with
15 leaves on in the summertime, you can have 4 or 5 feet of
16 brambles, and I wouldn't be able to see the people in the
17 back row of the jury. I might see an outline of somebody,
18 but that would be it.

19 I told you about excuses. Mr. Bahret came up
20 with a couple of more. First thing he said was about
21 Mr. Huber and the deposition, that I would have jumped up
22 there with the deposition. Candidly, I don't believe
23 Mr. Huber's deposition was ever transcribed --

24 MR. BAHRET: I've got it.

25 MR. ROBON: I don't have it. I didn't pay for

1 it. You have to pay for depositions to get them
2 transcribed, \$3 a page, or whatever. Didn't think I would
3 need it.

4 And then he comes up with an excuse that maybe
5 the plaintiff cut the trees. That's like saying I saw you
6 run over me with a car, and I hurt myself, I intentionally
7 stepped in front of the car. To suggest that the
8 plaintiff, Mr. McCarthy, cut those trees is beyond belief.
9 They're desperate. The city is desperate in this case.

10 If the city didn't encroach, where are those
11 thousands of brambles that Nick Nye says are shown on that
12 survey? The city had to cover up what they did. That
13 surveyor, if he signed that survey and we took that survey
14 to the state licensing board and showed that it was wrong,
15 he'd lose his license.

16 MR. BAHRET: Objection.

17 THE COURT: Again, let's keep our focus on what
18 you believe the evidence has shown.

19 MR. ROBON: That's why that survey wasn't signed
20 or dated or had a scale on it or had anything on it.

21 The city never explained to you why they didn't
22 go out and get another opinion from an outside surveyor.
23 Silence. Silence is like a criminal. It doesn't have to
24 take the witness stand, but you wonder why they don't. And
25 the reason they don't, because they're generally guilty.

1 The city could have cured these problems when
2 they occurred. They say, well, we could have gone in and
3 we could have gone in and planted trees. Planting trees
4 right now is not going to solve the problem. The water
5 problem has to go away. Plus, Mr. Laskey didn't --
6 Mr. Taylor didn't have any money, which makes it even
7 worse.

8 You have to think about what the city did with
9 the severing of the pipe. They made a knee-jerk reaction.
10 It would be like you go to the doctor and say, doctor, I
11 have all these symptoms, and you really have cancer, but he
12 doesn't do a test on you that he should do. Professionals
13 do testing, that's what professionals are taught to do.
14 Lawyers do research. That's what we're taught to do.
15 Engineers do calculations and find out how to solve
16 problems.

17 The City of Toledo, to this day cannot tell you
18 where that water is coming from. You ask yourself why?
19 Mr. McCarthy told him. We know where it's coming from.
20 They -- they refuse to recognize it. They don't want to
21 recognize it. They want to put their head in the sand and
22 say, no, we didn't do anything wrong. Why no testing? Not
23 only no testing when they severed the pipe, why no testing
24 for the last two years?

25 When Mr. Bahret talked about the damages that

1 Mr. Fayette talked about, the tree arborist, he said this
2 is what it would cost to plant, but these are only 6 feet
3 tall. These aren't 15 or 18 or 20 feet tall. What he did
4 is he came up with a higher number of 310,000 to compensate
5 for the time that it would take these trees to grow up,
6 branch out, and back a screen like was there before.

7 This is simply a case about government versus a
8 citizenry. Every person who testified in this case, other
9 than Mr. Jenkins and Mr. Domini, were city employees or
10 contractor employees. They didn't bring any outside
11 engineers in, they didn't bring any outside surveyors in,
12 and you ask yourself why? Just why?

13 When you go into deliberations, you're going to
14 say, well, why we're here? I think you understand why
15 you're here now. You'll ask yourself did the city do these
16 wrongs? I think that we've given you a lot of evidence and
17 documentation that they did.

18 The worse part of a case like this is that this
19 case, if the city would have acknowledged responsibility
20 two years ago, they could have put that pipe in while they
21 were excavating for that 66-inch storm water drain, just
22 put that one down 2 or 3 feet deeper, ran a pipe over it.
23 You know, thousand dollars, I bet. But they refused. They
24 were arrogant. Arrogant. They wouldn't even consider
25 that.

1 And then they -- think about it this, they
2 severed that -- they agreed to sever that pipe before the
3 contractor even got to it. Then, of course, they say,
4 well, it was plugged, it wasn't working.

5 I didn't ask the mayor to come here.
6 Mrs. Soncrant doesn't report to the mayor. There's levels
7 of management that were above her that were involved in
8 this management decision. They don't want to take the
9 responsibility. This is the only time that the plaintiff
10 will be able to come to court, can't go against anybody
11 else, that we could have a 40-year flood tomorrow, it could
12 flood the house. We can't ever come back. One lawsuit,
13 ever.

14 When you go into your deliberations, I want you
15 to remember one thing, people are going to ask you this
16 Labor Day weekend, they're going to ask you next month,
17 next year, several years from now, tell us about the case
18 that you were involved in. What was it about and what did
19 happen? You want to be proud of your decision. You want
20 to be proud that you set a pattern of not allowing a
21 government to take advantage of a situation, to put its
22 head in the sand and give all kinds of excuses and create
23 real financial harm to a plaintiff, and when you think
24 about that, you'll realize that's really what happened
25 here. All they're doing is giving you excuses, it's called

1 defenses.

2 And something happened in this trial that I
3 really didn't know how to deal with. Mrs. Soncrant cried,
4 and I feel very bad about that. And I apologize to you for
5 that. But she was emotional and she finally did say, you
6 know, I may have made a mistake. And I give her credit for
7 that, but her bosses won't acknowledge that.

8 I hope that when you sit in the deliberations
9 you'll consider all the things that we spoke about, look at
10 the exhibits, think about logic, every day life. When you
11 think about every day life, those of you who own homes, you
12 know water is coming in here. You know that if water is
13 coming in here, it has to go someplace. And one of the
14 reasons they probably bumped the gentleman that was sitting
15 over here --

16 MR. BAHRET: Objection.

17 THE COURT: Oh, no, Marve. No, no, I sustain
18 that.

19 MR. ROBON: Anyway, we heard a lot of testimony
20 about flooding in Findlay and things like that.

21 THE COURT: You're time is expired, but I'll give
22 you, wrap up, please.

23 MR. ROBON: Please just consider the financial
24 harm to Mr. Taylor and Mr. Laskey when you make a verdict,
25 hopefully against the City of Toledo.

1 Thank you.

2 THE COURT: Ladies and gentlemen, the evidence is
3 completed. Earlier I instructed you on the law and you
4 have now heard the last from the lawyers. What is next is
5 for me to instruct you on how to conduct your
6 deliberations. This is only a couple pages so bear with
7 me.

8 When you go to the jury room, your first function
9 will be to select a foreperson to preside over your
10 deliberations. The foreperson does not have any greater
11 power than any other juror, and his or her vote does not
12 have any more importance than other votes.

13 MR. BAHRET: I'm sorry, Your Honor, I was trying
14 to get this out of the way so I could see.

15 THE COURT: In order to conclude the case, all of
16 the members of the jury must agree. The foreperson serves
17 the purpose of helping you conduct your deliberations in an
18 orderly manner in giving each of you the opportunity to
19 express your opinion. The foreperson is also responsible
20 for insuring that you conduct your deliberations in
21 accordance with The Court's instructions. One additional
22 duty of the foreperson is to see that the verdict form is
23 returned to The Court after you have reached a verdict.

24 With regard to note taking, I instructed you at
25 the start of the trial the decision to take notes was

1 purely your own based upon your own assessment as to
2 whether or not it would assist you in following the
3 evidence. And it may be that some of you took extensive
4 notes, while some of you took very few notes. This is not
5 significant.

6 What must be stressed is any notes taken by a
7 juror, extensive or few, are not a literal record of the
8 points covered, nor anything close to a literal record.
9 Moreover, you must bare in mind during your deliberations
10 that the memory of a note-taking juror is in no way more or
11 less reliable than the memory of a juror who chose not to
12 take notes. It is your individual recollection of the
13 testimony that must control and not the existence of any
14 notes.

15 During your deliberations, you are, of course,
16 permitted to take breaks, however, you may not discuss the
17 case unless all members of the jury are present. So if you
18 separate briefly to take a walk, to take a smoke, to have a
19 snack, and somebody leaves the jury room, you must not
20 discuss the case.

21 Please make sure our deputy clerk, Carol, knows
22 your whereabouts if you leave the jury room. Also, Carol
23 will collect your cell phones during your deliberations,
24 and I promise we'll return them to you. You are to use the
25 phone in the jury room only to call Carol.

1 And when you've reached a signed a verdict, that
2 includes completing interrogatories, you will call Carol,
3 and she'll come and escort you back to the courtroom for
4 the announcement of your verdict.

5 Until your verdict is announced in open court, no
6 juror is permitted to disclose to anyone, including me, the
7 status of your deliberations or the nature of your verdict.

8 The Court cannot embody all the law in any single
9 part of the instructions, and considering one portion you
10 must consider it in light of and in harmony with all the
11 instructions. Whether or not certain instructions are
12 applicable may depend upon conclusions you reached on the
13 facts by a preponderance of the evidence. If, during your
14 deliberations, you are in doubt about a portion of these
15 instructions, the foreperson should put your question in
16 writing, including specifically what is requested, and
17 deliver the written question to Carol by calling her on the
18 phone, and she'll come retrieve the note from you.

19 Ladies and gentlemen, if you have an impression
20 that I have indicated how any disputed fact should be
21 decided, you must put aside such an impression because that
22 decision must be made by you based solely upon the facts
23 presented to you in this courtroom. And if during the
24 course of the trial, I have said or done anything that you
25 consider an indication of my view on the case, you are

1 instructed to disregard it.

2 Circumstances in this case may arouse sympathy
3 for one party or the other. Sympathy is a common, human
4 emotion. The law does not expect you to be free of such
5 normal reactions. However, the law and your oath as jurors
6 requires you to disregard sympathy and not to permit it to
7 influence your verdict. It is your duty to weigh the
8 evidence, to decide the disputed questions of fact, apply
9 the instructions of law to your findings, and render your
10 verdict accordingly.

11 Your duty as jurors is to arrive at a fair and
12 just verdict. Your initial conduct upon commencing
13 deliberations is a matter of importance. It is not wise to
14 express immediately a determination or to insist upon a
15 certain verdict. Having so expressed yourself, your sense
16 of pride may be aroused and you may hesitate to give up
17 your position, even if it is shown that it is incorrect.

18 Consult with one another in the jury room.
19 Deliberate with the view to reaching an agreement, and if
20 you can, do so without disturbing your individual judgment.
21 Each of you must decide the case for yourself. You should
22 do so, however, only after a discussion of the case with
23 the other jurors. Do not hesitate to change an opinion if
24 convinced it is wrong; however, you should not surrender
25 your opinion concerning the weight of the evidence in order

1 to be congenial or to reach a verdict solely because of the
2 opinions of the other jurors.

3 Anything further from counsel for either side?

4 Plaintiff?

5 MR. ROBON: No, Your Honor.

6 THE COURT: Defendant?

7 MR. WATKINS: No, Your Honor.

8 THE COURT: Thank you.

9 Ladies and gentlemen, you may now retire to the
10 jury room, and Carol will follow you shortly with the
11 exhibits.

12 (Jury excused to deliberate at 10:00 a.m.)

13 MR. BAHRET: Judge, do we have to renew our
14 objections on the --

15 THE COURT: On what?

16 (A side-bar conference was had off the
17 record.)

18 THE COURT: If counsel would gather the exhibits
19 for Carol, please, so she can take only the ones that you
20 agree and I admitted.

21

22

23

24

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

s:/ Angela D. Nixon

Angela D. Nixon, RPR, CRR

Date

| | | |
|--|---|---|
| \$ | 4 | acquired [1] 955/14 |
| \$134,000 [3] 977/17 994/5 994/15 | 4 feet [1] 975/12 | across [2] 977/21 983/12 |
| \$2 [1] 979/18 | 4-inches [3] 985/7 985/9 985/11 | act [13] 954/15 955/5 959/20 959/20 |
| \$2 million [1] 979/18 | 40 [1] 950/8 | 959/25 959/25 960/3 960/4 960/9 960/9 |
| \$2,000 [1] 981/2 | 40-year [1] 1006/11 | 960/13 960/13 991/13 |
| \$20,000 [2] 973/21 993/16 | 419 [3] 947/16 947/19 947/21 | acted [1] 960/2 |
| \$200,000 [3] 978/10 978/18 997/16 | 43528 [1] 947/18 | action [2] 948/15 970/13 |
| \$22,500 [1] 993/16 | 43537 [1] 947/15 | actionable [3] 983/25 995/20 995/23 |
| \$3 [1] 1003/2 | 43624 [1] 947/21 | active [1] 957/19 |
| \$33,500 [1] 977/20 | 45 [1] 968/24 | activities [3] 967/18 968/20 992/3 |
| \$338,500 [1] 974/1 | 45,000 cubic [1] 978/2 | actual [7] 958/16 958/18 961/6 965/7 |
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| \$600,000 [1] 973/17 | 500-feet [1] 978/1 | add [2] 948/8 979/16 |
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| 10-feet [1] 978/1 | 6 feet [4] 974/13 974/15 974/16 1005/2 | administrators [1] 976/9 |
| 10-foot [1] 968/16 | 6-foot [1] 977/18 | admission [1] 953/4 |
| 100 [1] 947/15 | 6500 [1] 947/16 | admit [1] 986/13 |
| 10:00 [1] 1012/12 | 66-inch [2] 973/3 1005/21 | admitted [3] 952/2 952/9 1012/20 |
| 11 [3] 987/10 987/11 987/21 | 7 | advanced [1] 956/9 |
| 12 [1] 987/13 | 7050 [1] 947/18 | advantage [2] 968/12 1006/21 |
| 120 [1] 978/21 | 7800 [1] 947/19 | advised [1] 948/5 |
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| 14 [3] 983/20 985/10 987/13 | 8 feet [1] 1001/18 | affirmative [1] 949/21 |
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